

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

MICHAEL A. DALTON,	:	
		Case No. 3:06CV040
Petitioner,	:	
vs.	:	District Judge Thomas M. Rose
		Magistrate Judge Sharon L. Ovington
JIM ERWIN, Warden,	:	
Pickaway Correctional Institution,	:	
	:	
Respondent.	:	
	:	

ORDER

This habeas corpus case is before the Court upon Respondent's Motion to Stay Proceedings and Hold Case in Abeyance (Doc. #6) and Petitioner Michael A. Dalton's Memorandum in Opposition (Doc. #7).

Respondent seeks an Order staying this case because Dalton has not exhausted any sentencing claims he may seek to raise. Respondent alternatively seeks an Order barring Dalton from amending his habeas Petition to include any sentencing claims.

Dalton states, and Respondent acknowledges, that his Petition does not raise any sentencing claims. Dalton explains that he "has no intention of raising any sentencing issues in the present case...." (Doc. #7 at 1).

Although Dalton has apparently not raised any sentencing claims in the Ohio courts, his habeas petition is not a mixed petition because it does not raise any sentencing claims. In light of Dalton's affirmative statement that he has no intention of raising sentencing claims in the present

case, he may proceed with this case without exhausting these claims in the Ohio courts. This is so because Dalton bears the responsibility for determining whether he wants to raise unexhausted claims in his Petition or proceed without such claims. *See Rockwell v. Yukins*, 217 F.3d 421, 424 (6th Cir. 2000). This, however, also means that having chosen to proceed in this case without sentencing claims, Dalton may not seek to amend his Petition to raise any unexhausted sentencing claims in the future.

IT IS THEREFORE ORDERED THAT:

1. Respondent's Motion to Stay Proceedings and Hold Case in Abeyance (Doc. #6) is DENIED in part to the extent Respondent seeks an Order staying and holding this case in abeyance;
2. Respondent's Motion to Stay Proceedings and Hold Case in Abeyance (Doc. #6) is GRANTED in part to the extent Respondent seeks an Order barring Dalton from seeking to amend his Petition to add any unexhausted sentencing claims; and
3. **On or before October 27, 2006**, Respondent shall file an Answer or otherwise respond to Dalton's Petition as required by the Court's prior Order (Doc. #2). Dalton may file a Reply or Traverse within twenty-one days of receiving service of Respondent's Answer or other response to the Petition.

September 20, 2006

s/Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge